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APPENDIX III

RELEASED IN FULL

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Letter of 15 December 2005 from Mr Dick Marty, Chairperson of the Committee on Legal Affairs and Human Rights to Mr Antonio La Pergola, President of the European Commission for Democracy through Law

As you are no doubt aware, I am preparing a report on "alleged secret detention centres in Council of Europe member states" (PACE Doc 10748 and document AS/Jur (2005) 52 rev 2, copies attached). In this context, I have been mandated by the Committee on Legal Affairs and Human Rights to request a Legal Opinion from the Venice Commission.

The Committee would appreciate receiving an Opinion with respect to the following two inter-related matters:

1. An assessment of the legality of secret detention in the light of Council of Europe member States' international law obligations, in particular the European Convention on Human Rights and the European Convention for the Prevention of Torture. In particular, to what extent is a State responsible if - actively or passively - it permits illegal detention or abduction by a third State or an agent thereof?
2. What are the legal obligations of Council of Europe member States, under human rights and general international law, regarding the transport of detainees by other States through their territory, including their airspace? What is the relationship between such obligations and possible countervailing obligations which derive from other treaties, including treaties concluded with non-member States?

Bearing in mind that my report is to be presented at the Assembly's session on 23-27 January 2006, I would very much appreciate it if the said Legal Opinion, or at least an interim or provisional version thereof, could be provided to the Committee on Legal Affairs and Human Rights before the Assembly's January 2006 part-session.

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APPENDIX IV

Communication of 21 November 2005 from the Secretary General of the Council of Europe to the Contracting Parties to the ECHR

Request for an explanation in accordance with Article 52 of the European Convention on Human Rights

The Secretary General of the Council of Europe,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") and its Protocols;

Having regard also to the case law of the European Court of Human Rights which has given concrete expression to the rights and freedoms guaranteed thereunder and which has affirmed that the law and practice of the High Contracting Parties must comply with the provisions of the Convention and its additional Protocols;

Noting that there have been recent reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been apprehended and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive cooperation of High Contracting Parties to the Convention or by High Contracting Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged;

Bearing in mind the fundamental importance of the safeguards contained in the Convention against arbitrary deprivation of liberty both in their own right and for the protection of the right to life and for upholding the absolute prohibition of torture or inhuman or degrading treatment or punishment;

Considering that, under Article 1 of the Convention, the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms guaranteed therein and that the participation, acquiescence or connivance of the authorities of a Contracting State in the acts of the agents of another State affecting Convention rights may engage the Contracting State's responsibility under the Convention and that such responsibility may also be engaged where that State's agents are acting *ultra vires* or contrary to instructions;

Considering also that unacknowledged deprivation of liberty raises serious questions concerning the effective implementation of, and compliance with, the Convention, notably its Articles 2, 3, 5, 6, 8, 13 and Article 2 of Protocol No. 4 to the Convention;

Acting on the basis of the powers conferred on him by virtue of Article 52 of the European Convention of Human Rights:

1. Requests the Governments of the High Contracting Parties to furnish an explanation of the manner in which their internal law ensures the effective implementation of the provisions of the Convention and its additional Protocols, as interpreted by the European Court of Human Rights, regarding the following specific issues:

- explanation of the manner in which their internal law ensures that acts by officials of foreign agencies within their jurisdiction are subject to adequate controls;
- explanation of the manner in which their internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within their jurisdiction, whether such deprivation of liberty is linked to an action or an omission directly attributable to the High Contracting Party or whether that Party has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty;
- explanation of the manner in which their internal law provides an adequate response to any alleged infringements of Convention rights of individuals within their jurisdiction,

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notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims;

In the context of the foregoing explanations, an explanation is requested as to whether, in the period running from 1 January 2002 (or from the moment of entry in force of the Convention if that occurred on a later date) until the present, any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency. Information is to be provided on whether any official investigation is under way and/or on any completed investigation;

2. Requests that these explanations be provided by 21 February 2006.

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